

ORDINANCE NO. 19-~~17~~18

An Ordinance of the Common Council of the City of Westfield (the “Council”) authorizing a program to finance certain economic development facilities and the issuance of an economic development revenue note of the City of Westfield, Indiana (the “City”), designated as the City of Westfield, Indiana, Taxable Economic Development Tax Increment Revenue Note, Series 2019 (Wheeler Landing Public Improvements Project) (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the note is issued), in a maximum initial principal amount not to exceed Seven Million Two Hundred Seventy-Two Thousand Seven Hundred Sixty-Five Dollars (\$7,272,765), and approving and authorizing other actions in respect thereto.

WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (collectively, the “Act”) declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, this definition of economic development facilities in the Act includes “infrastructure improvements”; and

WHEREAS, pursuant to the Act, the City is authorized to initiate a program for financing economic development facilities for developers and users in Indiana through the issuance of taxable or tax-exempt bonds or notes and to issue such revenue bonds or notes for the purpose of financing, reimbursing or refinancing the costs of such program, including the acquisition, design, construction, installation, improvement, equipping and operation of economic development facilities, in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, Wheeler Landing I, LLC, an Indiana limited liability company (the “Company”), desires to finance, or to obtain reimbursement for prior payment of, all or any portion of the costs defined as Improvement Costs per the Economic Development Agreement (“Improvement Costs”) of certain infrastructure substantially benefiting the City consisting of road improvements and other local public improvements, including but not limited to the: (a) design and construction of the extension of Oak Ridge Road to be renamed Grand Park Boulevard (“Renamed Grand Park Boulevard”) to State Road 32, including the “T” intersection for the east/west road south of 186<sup>th</sup> Street connecting the existing Wheeler Road roundabout to Renamed Grand Park Boulevard; (b) design and construction of the extension of Tournament Trail from Renamed Grand Park Boulevard to Wheeler Road; (c) design and construction of a yet to be named east/west road connecting Wheeler Road to Renamed Grand Park Boulevard, such road being to the north of Tournament Trail and to the south of 181<sup>st</sup>; (d) cost of improvements to the existing signal and turn lanes at Wheeler Road and State Road 32; (e) cost of the traffic signal at Wheeler Road and Tournament Trail; and (f) design, obtaining the regulatory approvals, and construction of storm water infrastructure to serve the Project (as defined in the Economic Development Agreement), and certain future needs of the City,

including a regional storm water retention/detention pond, ((a) through (f) are collectively, the “Public Improvements”); and

WHEREAS, the Public Improvements are, or will be, located in or physically connected to an allocation area, known as the Wheeler Landing Economic Development Allocation Area (the “Allocation Area”), previously established by the Redevelopment Commission of the City (the “Redevelopment Commission”); and

WHEREAS, the Company has advised the Westfield Economic Development Commission (the “Economic Development Commission”) and the City concerning the Public Improvements, and have requested that the City, pursuant to the Act, initiate a program and issue an economic development revenue note of the City, designated as the City of Westfield, Indiana, Taxable Economic Development Tax Increment Revenue Note, Series 2019 (Wheeler Landing Public Improvements Project) (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the note is issued) (the “Note”), in the initial principal amount not to exceed Seven Million Two Hundred Seventy-Two Thousand Seven Hundred Sixty-Five Dollars (\$7,272,765), for the purpose of providing funds for paying or reimbursing all or a portion of the costs of acquisition, design, construction, installation, improvement, equipping and/or operation of the Public Improvements; and

WHEREAS, the Economic Development Commission has rendered a report concerning the proposed program and financing or refinancing of economic development facilities for the Company and the Plan Commission has been given the opportunity to comment thereon; and

WHEREAS, pursuant to Section 24 of the Act, following a public hearing held on May 8, 2019, the Economic Development Commission found that the establishment of a program and financing of the Public Improvements complies with the purposes and provisions of the Act and that such program and financing will be of benefit to the health and welfare of the City; and

WHEREAS, the Economic Development Commission has determined that the financing will not have an adverse competitive effect or impact on any similar facility or facility of the same kind already constructed or operating in the same market area or in or about the County; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to initiate a program and reimburse the Company for the Improvement Costs by issuing the Note; and

WHEREAS, the City intends to initiate a program and issue the Note in accordance with and pursuant to the terms of this Ordinance and a Financing Agreement, to be dated the first day of the month in which the Note is delivered (or such other date as the officers of the City may hereafter approve) (the “Financing Agreement”), between the City and the Company with respect to the Public Improvements; and

WHEREAS, pursuant to the Economic Development Agreement and the Financing Agreement, the Company will make certain representations, warranties and commitments with respect to the Public Improvements in accordance with the terms thereof; and

WHEREAS, the Note will be payable as to principal and interest solely from incremental property taxes derived from the Allocation Area and certain road impact fees (“RIF”) as set forth in the Economic Development Agreement, upon such terms and conditions as otherwise provided in the Economic Development Agreement, the Financing Agreement and this Ordinance; and

WHEREAS, no member of the Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Note authorized herein, which pecuniary interest has not been fully disclosed to the Council and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16; and

WHEREAS, there has been submitted to the Economic Development Commission for its approval a form of the Financing Agreement and a form of this proposed Ordinance, including a form of the Note which is set forth therein and herein, which were incorporated by reference in the Economic Development Commission’s resolution adopted on May 8, 2019, which resolution has been transmitted hereto; and

WHEREAS, based upon the resolution adopted by the Economic Development Commission pertaining to the Public Improvements, the Council hereby finds and determines that the initiation of a program and funding approved by the Economic Development Commission for all or a portion of the Public Improvements will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act and the amount necessary to finance all or a portion of the costs of the program and the Public Improvements will require the issuance, sale and delivery of an economic development tax increment revenue note in an initial principal amount not to exceed Seven Million Two Hundred Seventy-Two Thousand Seven Hundred Sixty-Five Dollars (\$7,272,765); now therefore:

**BE IT ORDAINED BY THE COUNCIL OF THE  
CITY OF WESTFIELD, INDIANA:**

Section 1. Findings of Public Purpose. It is hereby found, determined, ratified and confirmed that the initiation of a program to finance the economic development facilities consisting of the Public Improvements and the issuance of the Note, will: (i) result in the diversification of industry, the creation or retention of business opportunities and the creation or retention of opportunities for gainful employment within the jurisdiction of the City; (ii) serve a public purpose, and will be of benefit to the health and general welfare of the City; (iii) comply with the purposes and provisions of the Act and it is in the public interest that the City take such lawful action as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment within the jurisdiction of the City; and (iv) not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City.

Section 2. Form of Financing Agreement. The form of the Financing Agreement presented herewith is hereby authorized and approved, and such document shall be kept on file by the Clerk-Treasurer of the City (the “Clerk-Treasurer”). In compliance with Indiana Code 36-

1-5-4, two (2) copies of the Financing Agreement are on file in the office of the Clerk-Treasurer for public inspection. The Mayor and the Clerk-Treasurer are hereby authorized and directed to execute and deliver the Financing Agreement on behalf of the City, with such changes or modifications therein as the officer executing the same may approve with the advice of counsel, so long as the terms thereof are consistent with the parameters set forth in this Ordinance, such approval to be conclusively evidenced by the execution thereof.

Section 3. Issuance and Terms of the Note.

(a) The City is authorized to issue the Note in the maximum initial principal amount not to exceed Seven Million Two Hundred Seventy-Two Thousand Seven Hundred Sixty-Five Dollars (\$7,272,765), for the purpose of reimbursing the Company for all or a portion of the Improvement Costs. The Note shall be issued by and in the name of the City, in fully registered form in the denominations of \$100,000, plus integral multiples of \$1 in excess thereof (or such other denominations as may be selected by the Clerk-Treasurer). The principal of the Note shall mature and be payable on February ~~201~~ and August ~~201~~ of each year with a final maturity date no later than twenty-five (25) years following the date of issuance of the Note. To the extent possible and as deemed advisable by the Clerk-Treasurer, payments of principal and interest on the Note shall be scheduled at such times and in such amounts so as to mirror the terms of the Developer Financing (as defined and set forth in the Economic Development Agreement), the estimated future Net TIF Revenues and the expected interest rate on the Note. The final amortization schedule shall be determined by the Clerk-Treasurer in a manner consistent with the Economic Development Agreement.

(b) The Note shall bear interest at a rate or rates per annum not exceeding eight percent (8.0%), the exact rate or rates to be determined by negotiation with the Company such that they mirror the terms of the Developer Financing, which payments shall be payable on February ~~201~~ and August ~~201~~ of each year and within thirty-five days of receipt of RIF (each, an "Interest Payment Date") commencing no earlier than August ~~20, 2020~~1, 2019, until the final maturity of the Note.

(c) The principal of the Note shall be payable at the principal office of the Registrar and Paying Agent (as defined below); provided, however, the registered owner shall be entitled to receive any principal payments by wire transfer on the due date by providing wiring instructions in writing to the Paying Agent before the Record Date for such payment. So long as the Company is the registered owner of the Note, presentation of the Note shall not be required, except upon the final maturity of the Note. Interest on the Note shall be paid by check or draft mailed or delivered one business day prior to an Interest Payment Date to the registered owner thereof at the address as it appears on the registration books kept by the Registrar and Paying Agent as of the Record Date for such Interest Payment Date or at such other address as is provided to the Registrar and Paying Agent in writing by such registered owner; provided, however, the registered owner shall be entitled to receive interest payments by wire transfer on the Interest Payment Date by providing wiring instruction in writing to the Paying Agent before the Record Date for such payment. All payments on the Note shall be made in any coin or currency of the United States of America which on the dates of such payments shall be legal tender for the payment of public and private debts.

(d) The principal of and interest on the Note is payable solely from incremental property taxes derived from the Allocation Area adjusted as set forth in the Economic Development Agreement and defined therein as the “Net TIF Revenues”, which will be transferred and deposited into the Sinking Fund (as defined herein), upon such terms and conditions as otherwise provided in the Economic Development Agreement, the Financing Agreement and this Ordinance. The Note does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation. The Note shall state plainly on its face that it is payable only from the Net TIF Revenues and RIF deposited into the Sinking Fund and that it does not constitute a general obligation of, an indebtedness of, or charge against the general credit of, the City. Neither the faith and credit nor the taxing power of the City is or may be pledged for the payment of the principal of, premium (if any) on, or interest on the Note. The registered owner of the Note is not entitled to compel the exercise of the taxing power by the City or the forfeiture of any of its property in connection with any default on the Note. The Note shall be delivered to the Company.

Section 4. Appointment of Registrar and Paying Agent; Registration.

(a) The Clerk-Treasurer is hereby authorized and directed to serve as, or to appoint a qualified financial institution to serve as, registrar and paying agent for the Note (the “Registrar” and “Paying Agent”). The Mayor and the Clerk-Treasurer, acting on behalf of the City, are hereby authorized to enter into such agreements or understandings with such financial institution as will enable a financial institution to perform the services required of the Registrar and Paying Agent on behalf of the City. The Clerk-Treasurer is further authorized and directed to pay the fees and expenses of the Registrar and Paying Agent out of available funds of the City.

(b) The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent by giving thirty (30) days’ written notice to the City and by first-class mail to the registered owner of the Note, and such resignation will take effect at the end of such thirty (30) days or upon the earlier appointment of a successor Registrar and Paying Agent by the City. Such notice to the City may be served personally or be sent by registered mail. The Registrar and Paying Agent may also be removed at any time as Registrar and Paying Agent by the City, in which event the Clerk-Treasurer, on behalf of the City, may appoint a successor Registrar and Paying Agent. The City shall cause the registered owner of the Note to be notified by first-class mail of the removal of the Registrar and Paying Agent. Notices to the registered owner of the Note shall be deemed to be given when mailed by first class mail to the addresses of such registered owner as it appears on the registration books kept by the Registrar and Paying Agent. Any predecessor Registrar and Paying Agent shall deliver all cash in its possession with respect thereto to the Note, together with the registration books, to the successor Registrar and Paying Agent. The Clerk-Treasurer is hereby authorized to act on behalf of the City with regard to any of the aforementioned actions of the City relating to the resignation or removal of the Registrar and Paying Agent and appointment of a successor Registrar and Paying Agent. The Clerk-Treasurer is further authorized and directed, on behalf of the City, to enter into such agreements or understandings with any subsequent Registrar and Paying Agent as will enable it to perform the services required of it. Any such subsequent Registrar and Paying Agent shall be paid for its services out of available funds of the City.

Section 5. Prepayment of Note. All or a portion of the Note may be subject to prepayment at the option of the City, in whole or in part, upon such terms and conditions as determined by the Clerk-Treasurer at the time of sale of the Note and set forth in the Purchase Agreement (as hereinafter defined).

Section 6. Form of Note. The form and tenor of the Note, together with the Registrar's certificate of authentication to be endorsed thereon, shall be substantially in the following form and otherwise consistent with Section 7.12 of the Economic Development Agreement (with blanks to be properly completed prior to the preparation of the Note):

No. R-1

UNITED STATES OF AMERICA

STATE OF INDIANA

HAMILTON COUNTY

CITY OF WESTFIELD, INDIANA  
ECONOMIC DEVELOPMENT TAX INCREMENT REVENUE NOTE, SERIES 2019  
(WHEELER LANDING PUBLIC IMPROVEMENTS PROJECT)

<u>Interest Rate</u>	<u>Maturity Dates</u>	<u>Original Date</u>	<u>Authentication Date</u>
___%	<u>Appendix A</u>	_____, 20__	_____, 20__

Registered Owner:

Principal Amount: Seven Million Two Hundred Seventy-Two Thousand Seven Hundred Sixty-Five Dollars (\$7,272,765)

The City of Westfield, Indiana (the "Issuer"), a municipal corporation organized and existing under the laws of the State of Indiana, for value received, hereby promises to pay in lawful money of the United States of America to the Registered Owner listed above or registered assigns, but solely from the Net TIF Revenues and RIF deposited into the Sinking Fund (each as defined in the hereinafter defined Ordinance), the Principal Amount or such portions thereof set forth above on the Maturity Dates set forth on Appendix A attached hereto and made a part hereof, unless this Note shall have previously been called for prepayment and payment of the prepayment price made or provided for, and to pay interest on the unpaid Principal Amount hereof in like money, but solely from the Net TIF Revenues and RIF deposited into the Sinking Fund, at the Interest Rate specified above, payable on each February ~~201~~ and August ~~201~~ or within thirty-five (35) days of the deposit of RIF into the Sinking Fund, commencing on [February ~~201~~/August ~~201~~, ~~2020~~], 2019 (each an "Interest Payment Date") until the Principal Amount is paid in full. Interest on the Note shall be payable from the Interest Payment Date to which interest has been paid next preceding the authentication date hereof, unless (i) the Note is authenticated after the first day of the month immediately prior to an Interest Payment Date (each, a "Record Date") and on or before such Interest Payment Date in which case it shall bear interest from such Interest Payment Date, or (ii) the Note is authenticated on or before the Record Date for the first Interest Payment Date, in which case it shall bear interest from the Original Date specified above. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

The principal of this Note is payable at the office of Clerk-Treasurer of the City of Westfield, Indiana (the "Registrar" and "Paying Agent"), in Westfield, Indiana, or at the designated office of any successor Paying Agent; provided, however, the Registered Owner shall be entitled to receive any payments by wire transfer on the due date by providing wiring instructions in writing to the Paying Agent before the Record Date for such payment. So long as the Company (as defined in the Ordinance) is the registered owner of the Note, presentation of the Note shall not be required, except upon the final maturity of the Note. All payments on the

Note shall be made in any coin or currency of the United States of America which on the dates of such payments shall be legal tender for the payment of public and private debts.

This Note is the only one of an economic development revenue note of the Issuer, designated as the City of Westfield, Indiana, Economic Development Tax Increment Revenue Note, Series 2019 (Wheeler Landing Public Improvements Project), dated \_\_\_\_\_, 2019 (hereinbefore and hereinafter the "Note"), in initial principal amount of Seven Million Two Hundred Seventy-Two Thousand Seven Hundred Sixty-Five Dollars (\$7,272,765). The Note is being issued for the purpose of providing funds for paying or reimbursing all or a portion of the costs of acquisition, design, construction, improvement, equipping and/or operation of the Public Improvements (as defined in the Ordinance). The Issuer has agreed to issue the Note and to finance the Improvement Costs (as defined in the Ordinance), all pursuant to the terms of the Financing Agreement, dated as of the date hereof (the "Financing Agreement"), between the Issuer and the Company (as defined in the Ordinance), which prescribes certain of the terms and conditions under which such proceeds and other funds will be used by the Company.

The Note is authorized by Ordinance No. \_\_\_\_\_ adopted by the Common Council of the City of Westfield (the "Council"), on the 10th day of June, 2019 (the "Ordinance"), and in accordance with Indiana Code 36-7-11.9 and 12 and other applicable provisions of the Indiana Code related or supplemental thereto, as amended and in effect on the date hereof (collectively, the "Act"). Pursuant to a resolution adopted by the Redevelopment Commission for the Issuer (the "Redevelopment Commission"), on May 20, 2019 (the "Pledge Resolution"), the Redevelopment Commission has pledged and assigned the TIF Revenues (as defined in the Ordinance) to the Issuer for the payment of the principal of and interest on this Note when due, with such pledge being senior in all respects to the prior pledge.

PURSUANT TO THE PROVISIONS OF THE ACT, THE ORDINANCE AND THE PLEDGE RESOLUTION, THE PRINCIPAL OF THIS NOTE AND THE INTEREST DUE THEREON ARE PAYABLE SOLELY FROM THE NET TIF REVENUES AND RIF TRANSFERRED BY THE REDEVELOPMENT COMMISSION TO THE ISSUER AND RIF (AS DEFINED IN THE ORDINANCE) AND DEPOSITED INTO THE SINKING FUND (AS DEFINED IN THE ORDINANCE). BY PAYMENT FOR AND ACCEPTANCE HEREOF, THE REGISTERED OWNER OF THIS NOTE AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE, THE PLEDGE RESOLUTION AND THE ACT.

The Note, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer, the State of Indiana, or any political subdivision or taxing authority thereof within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer, the State of Indiana, or any political subdivision or taxing authority thereof. The Note, as to both principal and interest, are not an obligation or liability of the Issuer, the State of Indiana, or of any political subdivision or taxing authority thereof, but is a special limited obligation of the Issuer and payable solely and only from the Net TIF Revenues transferred to the Issuer from RIF each deposited into the Sinking Fund which has been pledged and assigned to the payment of the Note in accordance with the Ordinance. Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of or the interest on this Note. The Note does not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of or interest on the Note. The Issuer has no taxing power with respect to the Note. No covenant or agreement contained in the Note, the Ordinance or the Pledge Resolution shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Westfield Economic Development Commission (the "Economic Development Commission"), the Redevelopment Commission or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Economic Development Commission, the Redevelopment Commission or the Issuer executing the Note shall be liable personally on the Note or be subject to any personal liability or accountability by reason of the issuance of the Note. Under no circumstances shall the Company or any other taxpayer in the Allocation Area (as defined in the Ordinance) be liable for making any payments due under the Ordinance, the Pledge Resolution or on the Note, including any payment of principal of, premium, if any, or interest on the Note.

The Note is issuable in registered form without coupons in the denominations of \$100,000, plus integral multiples of \$1 in excess thereof. This Note is transferable by the Registered Owner hereof in person or by its attorney duly authorized in writing at the designated office of the Registrar, but only in the manner, subject to

the limitations and upon payment of the charges provided in the Ordinance and upon surrender and cancellation of this Note. Upon such transfer a new registered Note will be issued to the transferee in exchange therefor.

The Issuer may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and the Issuer shall not be affected by any notice to the contrary.

*[Insert optional prepayment terms, if any]*

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the laws of the State of Indiana and under the Indenture precedent to and in the issuance of this Note exist, have happened and have been performed, and that the issuance, authentication and delivery of this Note have been duly authorized by the Issuer.

This Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, the City of Westfield, Indiana, has caused this Note to be executed in its name and on its behalf by the manual or facsimile signature of the Mayor and its corporate seal to be hereunto affixed manually or by facsimile and attested to by the manual or facsimile signature of its Clerk-Treasurer.

CITY OF WESTFIELD, INDIANA

By: \_\_\_\_\_  
J. Andrew Cook, Mayor

(Seal)

Attest:

\_\_\_\_\_  
Cindy J. Gossard, Clerk-Treasurer

#### CERTIFICATE OF AUTHENTICATION

This Note is the original Note described in the within mentioned Ordinance.

CLERK-TREASURER OF THE CITY OF  
WESTFIELD, INDIANA, as Registrar

By \_\_\_\_\_  
Authorized Officer

#### ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_  
\_\_\_\_\_  
(Please Print or Typewrite Name and Address) the within Note and all rights, title and interest thereon, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

SIGNATURE GUARANTEED:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association of a recognized signature guarantee program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatever.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

UNIF TRAN MIN ACT -- \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)

under Uniform Transfers to Minors Act

\_\_\_\_\_  
(State)

TEN COM -- as tenants in common

JT TEN -- as joint tenants with right of survivorship and not as  
tenants in common

Additional abbreviations may also be used though not in the above list.

APPENDIX A

Principal Maturity Schedule

<u>Maturity Date</u>	<u>Principal Amount</u>
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____

(End of Form of Note)

Section 7. Sale of Note; Funds and Accounts.

(a) The Mayor or the Clerk-Treasurer are each hereby authorized and directed to negotiate the sale of the Note to the Company upon the terms set forth in this Ordinance. A purchase agreement, term sheet or other written evidence of sale, in a form and substance acceptable to the Mayor and the Clerk-Treasurer (the "Purchase Agreement"), is hereby authorized and approved, and the Mayor and the Clerk-Treasurer are hereby authorized and

directed to execute and deliver such Purchase Agreement in form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance.

(b) The purchase price of the Note shall be deemed received by the City and evidenced by the Company's incurrence of expenditures for Improvement Costs, as approved by the City in accordance with the terms of the Economic Development Agreement. Subject to the terms and conditions of the Financing Agreement, the proceeds of the Note shall be used only for the purpose of paying, or reimbursing the Company for incurring Improvement Costs.

(c) There is hereby established a special fund designated as the "City of Westfield, Indiana, Economic Development Program Note Sinking Fund – Wheeler Landing Project" (the "Sinking Fund"). RIF and Net TIF Revenues shall be immediately deposited in the Sinking Fund, as and when received by the City from the Redevelopment Commission in accordance with the terms of the Pledge Resolution ~~and this Ordinance.~~ Moneys in the Sinking Fund shall be used by the Clerk-Treasurer solely for the purpose of paying the interest and principal on the Note as such becomes due. Nothing herein should be construed as requiring the Issuer to deposit in the Sinking Fund, funds from any source other than Net TIF Revenues received from the Redevelopment Commission and RIF.

#### Section 8. Execution and Delivery of Note.

(a) The Note shall be executed in the name of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the Clerk-Treasurer, who shall cause the official seal of the City to be impressed or a facsimile thereof to be printed or otherwise reproduced on each of the Note, all in the form and manner herein provided. In the event that any officer whose signature appears on the Note shall cease to be such officer for any reason before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had been in such office at the time of delivery. Subject to the provisions for registration set forth in this Ordinance, the Note shall be negotiable under the laws of the State of Indiana. The Note shall be authenticated with the manual signature of a duly authorized representative of the Registrar and Paying Agent. The Note shall not be valid or obligatory for any purpose until the certificate of authentication on such Note shall have been so executed.

(b) The Mayor and the Clerk-Treasurer are authorized and directed to execute such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transaction contemplated by this Ordinance, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor and the Clerk-Treasurer on the Note which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor and the Clerk-Treasurer on the Note may be facsimile signatures. The Mayor, the Clerk-Treasurer and any other officer of the City are authorized to arrange for the delivery of the Note to the purchaser, payment for which will be made in the manner set forth in the Purchase Agreement. The Mayor and the Clerk-Treasurer may, by their execution of the Note, the Financing Agreement or such other documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein so long as such changes are consistent with the parameters set forth in this Ordinance.

Section 9. Creation of Contract; Amendment. After the issuance of any Note, the provisions of this Ordinance shall constitute a contract by and between the City and the Company, and the Council covenants that it will not repeal, modify or amend this Ordinance without the prior written consent of the Company; provided, however, the City's obligations hereunder shall be subject in all respects to the Company's observance of its covenants and agreements set forth in the Project Agreement.

Section 10. Immunity of Officers and Officials. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, the Financing Agreement or under any judgment obtained against the City, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Financing Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the City, either directly or through the City, or otherwise, for the payment for or to the City or any receiver thereof or for or to any holder of the Note secured thereby, or otherwise, of any sum that may remain due and unpaid by the City upon any of the Note. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to any owner or holder of the Note, or otherwise, of any sum that may remain due and unpaid upon the Note hereby secured or any at them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Agreement and the issuance, sale and delivery of the Note.

Section 11. Payments or Actions on Non-Business Days. In the event that the date of making any payment or the last date for performance of any act or the exercising of any right, as provided in this Ordinance, shall be a legal holiday or a day on which banking institutions in the City or in such city or town in which the Registrar and Paying Agent is located are typically closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are typically closed, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

Section 12. Other Actions and Documents. The Council hereby requests, authorizes and directs the Mayor and the Clerk-Treasurer and any other officer having responsibility with respect to the issuance of the Note, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the City, acting for and on behalf of the City, to prepare, execute and deliver any and all other instruments, letters, certificates, agreements and documents as are determined to be necessary or appropriate to consummate the transactions contemplated by this Ordinance, and such determination shall be conclusively evidenced by the execution thereof. The instruments, letters, certificates, agreements and documents, including the Note, necessary or appropriate to consummate the transactions contemplated by this Ordinance shall, upon execution, as contemplated herein, constitute the valid and binding obligations or representations and warranties of the City, the full performance and satisfaction of which by the City is hereby authorized and directed

Section 13. Compliance with Indiana Open Door Law. It is hereby determined that all formal actions of the Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of the Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, as amended.

Section 14. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Effectiveness; Construction with Other Ordinances. This Ordinance shall be in full force and effect upon adoption and compliance with the procedures required by law. All ordinances, resolutions and orders or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

ADOPTED AND PASSED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019, BY THE  
WESTFIELD COMMON COUNCIL, HAMILTON COUNTY, INDIANA.

**WESTFIELD COMMON COUNCIL**  
**Hamilton County, Indiana**

**WESTFIELD COMMON COUNCIL**

<u><b>Voting For</b></u>	<u><b>Voting Against</b></u>	<u><b>Abstain</b></u>
_____ Jim Ake	_____ Jim Ake	_____ Jim Ake
_____ James J. Edwards	_____ James J. Edwards	_____ James J. Edwards
_____ Steve Hoover	_____ Steve Hoover	_____ Steve Hoover
_____ Robert L. Horkay	_____ Robert L. Horkay	_____ Robert L. Horkay
_____ Mark Keen	_____ Mark Keen	_____ Mark Keen
_____ Charles Lehman	_____ Charles Lehman	_____ Charles Lehman
_____ Cindy L. Spoljaric	_____ Cindy L. Spoljaric	_____ Cindy L. Spoljaric

ATTEST:

\_\_\_\_\_  
Cindy J. Gossard, Clerk-Treasurer  
City of Westfield, Indiana

| I hereby certify that ORDINANCE 19~~---~~18 was delivered to the Mayor of Westfield on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, at \_\_\_\_:\_\_\_\_.m.

\_\_\_\_\_  
Cindy Gossard, Clerk-Treasurer

| I hereby APPROVE Ordinance 19~~---~~18  
this \_\_\_\_\_ day of \_\_\_\_\_, 2019  
at \_\_\_\_:\_\_\_\_.m.

\_\_\_\_\_  
J. Andrew Cook, Mayor

I hereby VETO Ordinance 19~~---~~18  
this \_\_\_\_\_ day of \_\_\_\_\_, 2019  
at \_\_\_\_:\_\_\_\_.m.

\_\_\_\_\_  
J. Andrew Cook, Mayor

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ James T. Crawford, Jr.

This document prepared by  
James T. Crawford, Jr., Esq.  
KRIEG DEVAULT, LLP  
12800 North Meridian Street, Suite 300  
Carmel, Indiana 46032  
(317) 238-6239

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